

a notice should have been issued, as the object of issuing the notice is to ensure that the machinery is not operated as a precaution against the danger arising from the operation of defective machinery or absence of safety appliances.

It is clear that the prohibition contemplated by section 6(1) of the Ordinance is an absolute one and there is no obligation on the prosecution to prove *mens rea*. As Terrell J. observed in the case of *Rex v. G.H. Kiat* "the absolute prohibition.....is justified by the consideration that the strictness of the rule is necessary for the public benefit and protection. A master is the only person in a position to control his servant and accordingly the owner is made responsible for the acts of his servant whether or not such servant has carried out his master's instructions."

In this case there was evidence at the close of the prosecution case that:—

(1) on the day in question a rubber sheeting machinery was being operated by P.W.2, an engine driver, an employee of the estate. According to P.W.2 the rollers work by means of a belt operated by a fuel engine, a description coming under the definition of machinery set out in section 2 of the Ordinance;

(2) no certificate of fitness had been issued in respect of such machinery on the said date;

(3) the respondent was the manager of the estate.

In my view a *prima facie* case has been made out by the prosecution which if unrebutted would have warranted a conviction.

I will therefore allow the appeal. This case is to be remitted to the Magistrate's Court, Port Dickson, with a direction that the defence be called.

Appeal allowed.

MOHAMED SALLEH v. PUBLIC PROSECUTOR

[A. Cr. J. (Neal J.) July 17, 1961]

[Ipoh — Criminal Appeal No. 49 of 1961]

Road Traffic — Confiscation — Road Traffic Ordinance, 1958, s.92(2) and (4).

The appellant was convicted of offences under sections 92(1) and 74(1) of the Road Traffic Ordinance and fined. He was also disqualified for 12 months and the car was confiscated. On appeal on the question of confiscation under section 92(4),

Held: the operation of section 92(4) is limited to vehicles that have been seized by any Road Transport Officer (defined in the Ordinance) and the direction is to make either an order for forfeiture or for release. If there is a prosecution then on a proper application permission is extended to the Court to make either of those orders provided there has been a seizure even though that prosecution has not been successful. The *dicta* of Ong J. in *Gun Kim Luu v. Public Prosecutor* (1) not followed.*

Case referred to:—

(1) *Gun Kim Luu v. Public Prosecutor* [1961] M.L.J. 35.

* See the last paragraph of Ong J.'s judgment in *Gen Chye Huat v. Public Prosecutor*, post, p. 27 at p. 28.

A CRIMINAL APPEAL.

S. A. Lingam for the appellant.

Syed Othman (Deputy Public Prosecutor) for the respondent.

Neal J.: The appellant was convicted of offences against section 92(1) of the Road Traffic Ordinance, 49 of 1958 and section 74(1) of the same Ordinance. On the first charge he was fined \$150 in default one month's imprisonment; on the second charge he was fined \$75 in default two weeks' imprisonment. The appellant was also disqualified from holding a driving licence for 12 months and the car was ordered to be confiscated.

Before me the appeal was limited to the question of confiscation of the motor car.

In his grounds of judgment the Circuit Magistrate, Batu Gajah, relied upon the judgment of Ong J. in *Gun Kim Luu v. Public Prosecutor* (1) at page 36 when the learned Judge said:

"I would add a few remarks in connection with this case. The learned Magistrate appears to have overlooked the provisions of section 92(4) of the Road Traffic Ordinance. In my view, a conviction under section 92(1) leaves no option for him but to confiscate the vehicle, and I would draw the attention of all Magistrates to this point."

On the hearing of the appeal the Deputy Public Prosecutor drew my attention to the wording of sub-section (4) of section 92 and intimated that having regard to the wording thereof he found difficulty in supporting the order of confiscation notwithstanding the remarks of Ong J. to which I have referred. The relevant sub-section reads:

"An order for the forfeiture or for the release of any motor vehicle seized under the provisions of sub-section (2) shall be made by the Court before which the prosecution with regard thereto has been held, and an order for the forfeiture of such vehicle may be made if it is proved to the satisfaction of the Court that an offence against this section has been committed and that the vehicle was the subject matter of the offence, notwithstanding that no person may have been convicted of such an offence."

After consideration I found myself in agreement with the interpretation placed upon sub-section (4) by the Deputy Public Prosecutor and I allowed the appeal to the extent of setting aside the order of confiscation. As I found myself unable, with respect, to agree with the remarks of Ong J. to which I have referred, I intimated that I would give my reasons in writing.

As I interpret sub-section (4) its operation is in the first place limited to vehicles which have been seized by any Road Transport Officer as defined in the Ordinance, and there was no evidence in the record to establish the vehicle had been seized. Secondly, even if the first part of sub-section (4), to use the words of Ong J. leaves the Court with no option, it is clear from the words I have underlined that the direction is to make either an order for forfeiture or for

release. As I interpret sub-section (4) it is no more than an intimation by the legislature that once a motor vehicle has been seized by a Road Transport Officer pursuant to sub-section (2), then the Court before which the prosecution is held must make an order for forfeiture or for release. If there is a prosecution then on a proper application permission is extended to the Court to make either of those orders provided there has been seizure even though that prosecution has not been successful. And, finally, (sub-section (5)) if there is no prosecution within one month then the vehicle must be released by the Road Transport Officer.

Appeal allowed.

THE PERAK HAULIERS LTD. v. THE CYCLE & CARRIAGE CO. LTD.

[C.A. (Hill Ag. C.J., Good J.A. and Ong J.)
July 28, 1961]

[Ipoh — F.M. Civil Appeal No. 15 of 1961]

Landlord and tenant — Recovery of possession — Landlords requiring premises for their own business — Meaning of "business" — Meaning of "other accommodation" as distinct from "suitable alternative accommodation" — Hardship — Control of Rent Ordinance, 1956, s.12(1)(f) and (n).

Practice and Procedure — Costs under s.13 of the Control of Rent Ordinance, 1956 — Discretion.

The respondents, the owners of the premises claimed, were carrying on the business of importer, dealer and repairer of various makes of motor-cars, trucks, buses and motor-cycles. A portion of these premises was occupied by their agents and the remainder by the appellants who were carrying on a road haulage business from those premises and from other premises of their own situated about 2½ miles away. The respondents claimed possession of the portion occupied by the appellants on the ground that they reasonably required the space for the purpose of carrying on their own business. Photographic evidence showed that the respondents' agent's showroom in the premises was utterly inadequate for a good display of motor vehicles. There was also evidence to show that other accommodation was available to the appellants. An order for possession was made against the appellants.

The appellants appealed on the grounds: (1) the respondents did not require the additional space for the purpose of carrying on their own business; (2) it was not proved that other accommodation was available for the appellants; and (3) they would suffer hardship.

Held: (1) *per* Good J.A., that the respondents reasonably required the premises for their own business; *per* Ong J., that it was not open to the appellants to urge this ground on appeal, and further, the words "for the purpose of carrying on his own business" should not be construed in a restricted and technical sense to mean only such business as is carried on directly by a party and in his own name. *Weiner v. Harris* (9) applied, *Haynes v. Ford* (10) considered;

(2) "other accommodation" in paragraph (f) of section 12(1) of the Control of Rent Ordinance, 1956, must be distinguished from "suitable alternative accommodation" in paragraph (n). The accommodation which must be shown to be available for the purposes of paragraph (f) need only be adequate accommodation, whereas "suitable alternative accommodation" in paragraph (n) implies some measure of quality or amenities in addition to a purely quantitative measure. On the facts, the respondents have discharged the onus of proving that other accommodation was available to the appellant;

A (3) the appellants failed to prove hardship but only relative inconvenience to themselves and their customers;

(4) when the Court exercises its discretion to condemn the unsuccessful party in costs it should be made clear in the judgment that such order is made in the exercise of discretion under the proviso to section 18, whether or not any reasons are given.

B Cases referred to:—

- (1) *Aitken v. Shaw* [1933] S.L.T. (Sh. Ct.) 21.
- (2) *Epsom Grand Stand Association Ltd. v. Clarke* (1919) 35 T.L.R. 525.
- (3) *Sims v. Wilson* [1946] 2 All E.R. 261.
- (4) *Maguire v. Stewart* [1950] S.L.T. (Sh. Ct.) 22.
- (5) *Nevill v. Hardy* [1921] 1 Ch. 404.
- (6) *Parker v. Rosenberg* [1947] 1 K.B. 371, 377.
- (7) *Coplands v. King* [1947] 2 All E.R. 393.
- (8) *Smith v. Perry* [1947] 1 K.B. 230, 233.
- (9) *Weiner v. Harris* [1910] 1 K.B. 285, 291, 294.
- (10) *Haynes v. Ford* [1911] 2 Ch. 237, 248, 249.

CIVIL APPEAL.

D B.K. Das (N. Sharma with him) for the appellants.

S.A. Raj for the respondent.

Cur. Adv. Vult.

Hill Ag. C.J.: I have had the advantage of reading the judgments of my brothers Good and Ong with which I agree and to which I have nothing to add.

Good J.A.: In Brewster Road in the town of Ipoh, on a site convenient for business in the sense that it is both central and accessible, is a large single-storey building owned by the respondents. I am, like my brothers Hill and Ong, a former resident of Ipoh and I know the building well. I have driven past it thousands of times and I have been inside it more than once. The excellent photographs which form part of the record have refreshed my memory of what it looks like both inside and outside.

G Part of the space in the building is let to Ipoh Motors Limited, a company carrying on business as dealers in motor cars. The remainder is let to the appellants who are carriers of goods and they in turn have sub-let part of their space to a firm dealing in paint.

H The part occupied by Ipoh Motors has been described as a motor show-room and workshop; but the expression "show-room" would convey an entirely false impression to anyone who was familiar only with the kind of motor show-rooms which are to be seen in any large city, in which the latest masterpieces of the motor car designers are displayed in glittering splendour with space enough to enable would-be purchasers or hopeful dreamers to stand back and admire the beauty of line and balanced proportions of the newest models. A glance at the last two photographs in Exhibit P 2 will show how new motor cars have to be crammed into the limited space available in the show-room of Ipoh Motors, so that it is quite impossible to make a proper visual comparison of the different models on sale, while to